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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

File: WAC 99 124 51362 Office: CALIFORNIA SERVICE CENTER Date: JUL 02 2003

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center. The Administrative Appeals Office (AAO) rejected the petitioner's appeal of that decision. The petitioner filed a motion to reopen, which the AAO dismissed. The matter is now before the AAO on a second motion to reopen. The motion will be dismissed. The AAO will review the matter on certification and reopen the matter on its own motion. The petition will be denied.

We note that the original attorney of record was [redacted] The record, however, reflects no significant action by Mr [redacted] following the initial filing. The term "counsel" shall, in this decision, refer solely to the present attorney of record.

On the latest motion, counsel argues that the motion was dismissed in error. The sole stated ground for dismissal was that the record did not contain a Form G-28, Notice of Entry of Appearance as attorney or Representative, authorizing the attorney to file the appeal on the petitioner's behalf. The record indicates that counsel had indeed submitted a Form G-28 signed by the petitioner.

In rejecting the appeal, and dismissing the subsequent motion, the AAO cited 8 C.F.R. § 103.3(a)(1)(iii)(B), which states that the beneficiary of a visa petition is not an affected party with standing to appeal the denial of the petition. The AAO had taken the position that counsel represented only the beneficiary, not the petitioner. The AAO failed, however, to take into account 8 C.F.R. § 103.3(a)(1)(v)(A)(*2*)(*ii*) and (*iii*), which indicate that if the absence of a properly executed Form G-28 is the only impediment to an otherwise properly-filed appeal, then "the reviewing official . . . shall ask the attorney or representative to submit Form G-28 directly to the AAU" (now AAO). The submission of a Form G-28 signed by the petitioner thus overcomes the only stated ground for the rejection of the appeal, and for the dismissal of the subsequent motion.

It is not clear that a rejected appeal is subject to reopening or reconsideration on the petitioner's motion. In this instance, because it is clear that the rejection and subsequent dismissal arose from AAO error, or at least deviation from regulatory guidelines, we will review the matter here on certification pursuant to 8 C.F.R. § 103.4(a)(1) and hereby reopen the petition on our own motion.

The petitioner is a church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4), to perform services as a pastor. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a pastor immediately preceding the filing date of the petition.

On the latest motion, filed on August 13, 2002, counsel asserts that a brief will be forthcoming within 30 days. To date, ten months later, the record contains no further submission. Furthermore, while the regulation at 8 C.F.R. § 103.3(a)(2)(vii) allows for limited circumstances in which a petitioner can supplement an already-submitted appeal, that regulation applies only to appeals, and not to motions to reopen or reconsider. There is no analogous regulation that allows a petitioner

to submit new evidence in furtherance of a previously filed motion. We will, however, consider the materials submitted with the previous motion and the improperly rejected appeal.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

> (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;
>
> (ii) seeks to enter the United States--
>
> > (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
> >
> > (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
> >
> > (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and
>
> (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The regulation at 8 C.F.R. § 204.5(m)(1) echoes the above statutory language, and states, in pertinent part, that "[a]n alien, or any person in behalf of the alien, may file an I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States." The regulation indicates that the "religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition."

8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

> (ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

> (A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

The petition was filed on March 22, 1999, and therefore the two-year qualifying period began on March 23, 1997. The beneficiary was in Korea for much of this time, arriving in the U.S. on November 17, 1998. Thus, to demonstrate two years of qualifying employment, the petitioner must submit documentation from employers in Korea as well as in the United States.

The initial filing of the petition includes the beneficiary's resume, which indicates that the beneficiary has served "as an evangelist and elder for Misu Presbyterian Church" from January 1, 1987, to the present, and "as an ordained minister for" the petitioner from December 18, 1998 to the present. Misu Presbyterian Church is in Tongyoung City, South Korea, raising the question of how the beneficiary was able to continue working for that church as an evangelist and elder while also working as a minister thousands of miles away at the petitioning church in the United States. The beneficiary's resume is, essentially, a claim of employment, rather than corroboration of that claim.

A letter from Pastor [redacted] of Misu Presbyterian Church states that the beneficiary "has been ministering since January 1987 – Present," but the letter is dated August 30, 1998, when the beneficiary was still in Korea. Pastor Joung states that the beneficiary has worked "as an evangelist and a minister."

Rev. [redacted] pastor of the petitioning church, states "[w]e are able to employ [the beneficiary] on a full time basis as a Pastor for our Church, he will become our Senior Pastor when the current Senior Pastor retires."

The initial submission included a photocopied certificate, issued by the petitioning church, indicating that the petitioner "has fully met all requirements set forth to be recognized as an ORDAINED MINISTER." The certificate is dated December 18, 1998. The initial submission contains no evidence that the beneficiary had been ordained prior to that date.

Because the above materials did not present a complete picture of the beneficiary's work history during the two years immediately preceding the filing of the petition, the director instructed the petitioner to provide additional evidence of the beneficiary's employment history from March 23, 1997 onward. Among other documents, the director requested "the *original* Certificate of Ordination" (emphasis in original) and evidence that the beneficiary has been a member of the petitioner's denomination for at least two years prior to the petition's filing date.

In response, the petitioner has submitted a document on off-yellow card stock. At first glance, this document appears to be the original of the certificate of ordination, previously submitted as a photocopy. Close inspection of the document, however, shows that the signatures on the

purported original do not match the signatures on the photocopy. For example, on the copy, the loop of the "g" in the name [redacted] passes through the middle of the "c" in "Secretary," giving the letter the appearance of a lowercase "e." On the purported original, the loop of the "g" in [redacted] only touches the upper left portion of the "c." On the photocopied signature of "Rev: [redacted] Park," the upper dot of the colon (":") is slightly to the left of the lower dot. On the purported original signature, the upper dot is significantly to the right of the lower dot. There are other noticeable discrepancies as well, visible to the naked eye and more pronounced under low magnification.

Clearly, the document submitted is not the original that was reproduced in the previously submitted photocopy. Rather, it is a reproduction that appears to have been intended to resemble the photocopied document. The petitioner does not explain the substitution. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

In addition to the original certificate of ordination, the director requested evidence to establish "the requirement[s] for ordination." In response, the petitioner has submitted photographs from the beneficiary's ordination ceremony and a statement from Rev [redacted] Park describing "leader training of church members in ministry." Rev [redacted] does not specify whether this training is required for, or leads to, ordination as a minister in the denomination.

Nothing in the record indicates that the beneficiary was ordained as a minister before December 1998. The statute and regulations require that the beneficiary has worked in the same occupation for the full two years immediately preceding the filing of the petition. The regulation at 8 C.F.R. § 204.5(m)(2) defines a "minister" as follows:

> *Minister* means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

If the beneficiary was not ordained until December 1998, it would appear that, before that time, the beneficiary acted as a lay preacher, an occupation specifically excluded from the regulatory definition of "minister."

In another letter, Rev [redacted] states that the beneficiary "has been a full-time Rev. Assistant Pastor at our church, working over 35 hours a week, from March 19, 1999 to present, giving his [sic] one year of experience at our church. . . . We do not pay [the beneficiary]. The church and its

members donate money for his rent and bills, food, and clothing . . . We do not pay him on a salary basis because he is not authorized to work as of yet."

In yet another letter, Rev [redacted] states that the beneficiary began serving the petitioning church "as a volunteer minister" on November 20, 1998. The petitioner also submits another copy of the previously submitted letter from Misu Presbyterian Church indicating that the beneficiary "has been ministering since January, 1987," "as a[n] evangelist and a minister." This letter describes the beneficiary's position as "Evangelist and Elder."

The director denied the petition, stating that the record does not show that the beneficiary has served continuously in the same position for the entire two years immediately preceding the filing of the petition. The director noted documentation and Rev. [redacted] statements, which indicated that the beneficiary was not ordained until December 1998, and did not begin working as a full-time minister until four months later. The director also observed that unpaid volunteer work does not constitute employment. The director concluded "the evidence submitted with the petition is insufficient to establish that the beneficiary has been performing full-time work as a Pastor for the two-year period immediately preceding the filing of the petition."

Subsequent to the denial of the petition, counsel cites two unpublished appellate decisions, which indicate that neither the statute nor the regulations specifically require full-time employment during the qualifying two-year period. The cited decisions were never published and therefore have no force as binding precedents. This agency has the authority to interpret its own regulations, and that interpretation is that the two-year experience requirement refers to full-time salaried employment. We note also that section 101(a)(27)(C)(ii)(I) requires that the alien "seeks to enter the United States . . . solely for the purpose of carrying on the vocation of a minister of that religious denomination." Section 101(a)(27)(C)(iii) requires that the alien "has been carrying on such vocation . . . continuously." It is reasonable to interpret this statutory language to state that the alien must have worked "solely" in the vocation of minister for the entire two-year period, rather than working part-time as a minister and supporting himself in part through other means.

Counsel similarly cites unpublished appellate decisions to indicate that unpaid volunteer work can constitute qualifying employment. The previously stated *caveat* regarding unpublished decisions applies here as well. The AAO could easily produce a far greater number of unpublished appellate decisions that exclude volunteer work from consideration. These decisions are more recent and thus supersede earlier decisions. While the at times vague language in the statute and regulations caused some delay in arrival at a uniform and consistent policy, the present interpretation of the regulations indicates that unpaid volunteer work is not experience in an occupation.

Counsel then turns to the issue of whether the beneficiary has worked in the same occupation throughout the two years immediately preceding the filing of the petition. Counsel acknowledges that the beneficiary "was not an ordained minister for this entire two-year period," but counsel contends that "[b]ecause [the beneficiary] graduated from Kyung Nam Theological Seminary in January 1988 with a degree in Theology . . . he is qualified to act as a minister." Counsel offers

no documentary support for the claim that a degree in theology is sufficient qualification to act as a minister. The question arises as to what purpose ordination serves, if one need not be ordained to act as a minister (as opposed to a lay preacher).

Counsel then offers dictionary definitions of "minister" and "evangelist," in an attempt to show that the two functions are essentially interchangeable and therefore the beneficiary's experience as an evangelist and elder constitute continuous employment in the occupation of minister. Rev. [redacted] in a new letter, states "it is our principle that we value one's experience of ministry the same regardless of its title." The regulation, however, contains its own definition of "minister," and the definition contained in the regulations necessarily supersedes any third-party definition. That regulation, as cited above, specifically states that the definition of "minister" "does not include a lay preacher."

Further, while the determination of an individual's status or duties within a religious organization is not under the Bureau's purview, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests within the Bureau. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N, Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

In a new notarized "experience certificate," Rev. [redacted] attests to the beneficiary's full-time employment as an "assistant evangelist and minister at Misu Presbyterian Church of Korea." Considering that Rev. [redacted] has been the pastor of a church in California since May 1978, he does not explain how he has the first-hand knowledge necessary to attest to the beneficiary's employment in Korea from 1987 to 1998. The attestation of a notary (the notary is, in fact, counsel) has no effect except to verify the authenticity of Rev. Park's signature.

The record shows that the beneficiary's full-time salaried work was not continuous during the two years immediately preceding the filing of the petition. The petitioner has not persuasively shown that the beneficiary worked in the same occupation throughout that two-year period; the evidence shows that the beneficiary was initially an evangelist who "ministered," in addition to other functions, and that the beneficiary was later officially ordained as a minister, which by regulation is a different occupation than lay preacher. The petitioner's unexplained submission of a visibly altered document material to this employment necessarily raises questions of credibility.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the petition will be denied.

ORDER: The petition is denied.